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BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MOONBUG ENTERTAINMENT LIMITED
and TREASURE STUDIO, INC.,

Plaintiffs,

v.

BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD,

Defendant.

BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD,

Counter-Plaintiff,

v.

MOONBUG ENTERTAINMENT LIMITED
and TREASURE STUDIO, INC.,

Counter-Defendants.

CASE NO. 4:21-CV-06536-EMC

**BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD'S AMENDED
ANSWER, COUNTERCLAIMS, AND
JURY DEMAND**

Judge: Honorable Edward M. Chen

Courtroom: 5, 17th Floor

BABYBUS' ANSWER

Defendant/Counter-Plaintiff BabyBus (Fujian) Network Technology Co., LTD (“BabyBus”), hereby submits this Amended Answer and Affirmative Defenses to the Complaint of Plaintiffs Moonbug Entertainment Limited and Treasures Studio, Inc. (collectively “Plaintiffs” or “Moonbug”). To the extent any of the headings of the Complaint require a response, BabyBus denies such allegations. BabyBus denies each and every allegation in the Complaint not expressly admitted below.

1. Paragraph 1 contains legal conclusions and arguments to which no response is required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

2. BabyBus currently lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 2, and therefore denies them.

3. BabyBus admits it offers YouTube channels under its “Super JoJo” brand. BabyBus denies that it copied Plaintiffs’ intellectual property. Further, to the extent the allegations in paragraph 3 purport to describe or quote one or more documents or webpages, BabyBus asserts that those documents or webpages are the best source of their full content and context. BabyBus denies the allegations to the extent they do not accurately represent the documents’ or webpages’ full content and context. Paragraph 3 also contains legal conclusions and arguments to which no response is required; to the extent a response is required, BabyBus denies the allegations in this paragraph. Except as expressly admitted, BabyBus denies the remaining allegations in paragraph 3.

4. BabyBus admits that Plaintiffs have submitted notices to YouTube that allege (wrongfully) BabyBus’ videos infringe one or more copyrights; BabyBus denies the allegations in those notices. BabyBus admits that it has removed certain videos from public view on YouTube. Paragraph 4 also contains legal conclusions and arguments to which no response is required; to the extent a response is required, BabyBus denies the allegations in this paragraph. Except as expressly admitted, BabyBus denies the remaining allegations in paragraph 4,

5. Paragraph 5 contains legal conclusions and arguments to which no response is required; to the extent a response is required, BabyBus denies the allegations in this paragraph.

1 6. BabyBus currently lacks knowledge or information sufficient to form a belief as to
2 the truth or falsity of the allegations contained in paragraph 6, and therefore denies them.

3 7. BabyBus currently lacks knowledge or information sufficient to form a belief as to
4 the truth or falsity of the allegations contained in paragraph 7, and therefore denies them.

5 8. BabyBus admits that BabyBus has its business address at 2nd Floor, Building 10,
6 Hongfang, No. 1 Jingong Road, Fuzhou City, Fujian Province, China 350007. BabyBus admits
7 that, along with its parent company and affiliates, BabyBus provides digital content for children
8 through apps and platforms in 12 languages and 160 countries. BabyBus admits that BabyBus, its
9 parent company, and affiliates together had, at one point, more than 99 million monthly active users
10 for all such Super JoJo and non-Super JoJo content. BabyBus admits that its parent company
11 submitted IPO application materials to the Shenzhen Stock Exchange on June 18, 2021. BabyBus
12 further admits that on June 29, 2021, the Shenzhen Stock Exchange accepted and publicly disclosed
13 its parent company's prospectus. BabyBus admits that BabyBus' parent company and affiliates
14 together earned over \$100 million in 2020. BabyBus denies that any of its content infringes on any
15 of Plaintiffs' copyrights. Except as expressly admitted, BabyBus denies the remaining allegations
16 in paragraph 8.

17 9. BabyBus admits the allegations in Paragraph 9.

18 10. BabyBus admits that the Court has personal jurisdiction over BabyBus for this
19 action. BabyBus consented to personal jurisdiction in this judicial district by submitting counter
20 notifications under Section 512(g)(3)(D) of the Copyright Act through YouTube in response to
21 Plaintiffs' false notifications of claimed infringement. BabyBus currently lacks knowledge or
22 information sufficient to form a belief as to the truth or falsity of the allegations contained in
23 paragraph 10 regarding YouTube's operations, and therefore denies them. Except as expressly
24 admitted, BabyBus denies the remaining allegations in paragraph 10.

25 11. BabyBus admits the allegations in Paragraph 11.

26 12. For the purposes of the above captioned litigation, BabyBus consents to the
27 jurisdiction of this Court, and thus admits this Court has personal jurisdiction pursuant to BabyBus'
28 consent. BabyBus admits that it makes its Super JoJo branded videos available through YouTube's

1 platform, and that it has entered into an agreement with YouTube to use that platform; but BabyBus
2 denies any connection between YouTube and the Court's personal jurisdiction over BabyBus.
3 BabyBus further admits that it publishes, displays, and advertises its Super JoJo branded videos on
4 YouTube. BabyBus denies the its Super JoJo branded videos infringe on any of Plaintiffs' alleged
5 copyrights. BabyBus admits that it collected revenues derived from the marketing and distribution
6 of its Super JoJo content on the YouTube platform. Paragraph 12 also contains legal conclusions
7 and arguments to which no response is required, and BabyBus denies the remaining allegations in
8 Paragraph 12.

9 13. BabyBus admits that venue is proper in this district.

10 14. BabyBus admits that Civil Local Rule 3-2(c) is applicable and that assignment to any
11 division in this district is proper.

12 15. BabyBus currently lacks knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations contained in paragraph 15, and therefore denies them.

14 16. BabyBus currently lacks knowledge or information sufficient to form a belief as to
15 the truth or falsity of the allegations contained in paragraph 16, and therefore denies them.

16 17. BabyBus currently lacks knowledge or information sufficient to form a belief as to
17 the truth or falsity of the allegations contained in paragraph 17, and therefore denies them.

18 18. BabyBus currently lacks knowledge or information sufficient to form a belief as to
19 the truth or falsity of the allegations contained in paragraph 18, and therefore denies them.

20 19. BabyBus currently lacks knowledge or information sufficient to form a belief as to
21 the truth or falsity of the allegations contained in paragraph 19, and therefore denies them.

22 20. BabyBus currently lacks knowledge or information sufficient to form a belief as to
23 the truth or falsity of the allegations contained in paragraph 20, and therefore denies them.

24 21. BabyBus denies any allegations of "infringement," or characterizations of content as
25 "infringing," contained in Paragraph 21. BabyBus admits that it operates the Super JoJo show on
26 multiple channels on YouTube, including channels in various languages and those identified in
27 Exhibit 1 to the Complaint. BabyBus admits that Super JoJo content has appeared on YouTube and
28 Amazon video services. BabyBus denies the remaining allegations in Paragraph 21.

1 22. Paragraph 22 contains legal conclusions and arguments to which no response is
2 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

3 23. Paragraph 23 contains legal conclusions and arguments to which no response is
4 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

5 24. BabyBus admits that, like all infants, JoJo has a large head relative to the size of his
6 body, large eyes, and teeth. BabyBus further admits that JoJo has been depicted in yellow and blue
7 clothing. BabyBus further admits that JoJo has been depicted in 3-D animation. BabyBus denies
8 that any identified, alleged similarities between JoJo and any other fictional character reach elements
9 of the characters that are protectable in copyright or constitute copyright infringement. Paragraph
10 24 also contains legal conclusions and arguments to which no response is required; to the extent a
11 response is required, BabyBus denies the remaining allegations in this paragraph, including on the
12 ground that they are vague.

13 25. BabyBus admits that JoJo has been depicted as happy, positive, eager, and curious.
14 BabyBus admits JoJo has a brother and sister with whom he sometimes plays. BabyBus admits that
15 JoJo is the youngest of the three siblings. BabyBus admits that JoJo's name is "JoJo." BabyBus
16 denies that any identified, alleged similarities between JoJo and any other fictional character reach
17 elements of the characters that are protectable in copyright or constitute copyright infringement.
18 Paragraph 25 also contains legal conclusions and arguments to which no response is required; to the
19 extent a response is required, BabyBus denies the remaining allegations in this paragraph, including
20 on the ground that they are vague.

21 26. BabyBus admits that JoJo's family consists of a mother, father, older sister, older
22 brother, and a dog named Bingo. BabyBus denies that any identified, alleged similarities between
23 JoJo and any other fictional character reach elements of the characters that are protectable in
24 copyright or constitute copyright infringement. Paragraph 26 also contains legal conclusions and
25 arguments to which no response is required; to the extent a response is required, BabyBus denies
26 the remaining allegations in this paragraph, including on the ground that they are vague.

27 27. BabyBus admits that JoJo's family is wholesome and idealistic, and assist in
28 instructing children in necessary life skills. BabyBus denies that any identified, alleged similarities

1 between JoJo and any other fictional character reach elements of the characters that are protectable
2 in copyright or constitute copyright infringement. Paragraph 27 also contains legal conclusions and
3 arguments to which no response is required; to the extent a response is required, BabyBus denies
4 the remaining allegations in this paragraph, including on the ground that they are vague.

5 28. BabyBus admits that stuffed animals are featured in Super JoJo works, including for
6 the purposes of teaching instructional lessons to children. BabyBus denies that any identified,
7 alleged similarities between JoJo and any other fictional character reach elements of the characters
8 that are protectable in copyright or constitute copyright infringement. Paragraph 28 also contains
9 legal conclusions and arguments to which no response is required; to the extent a response is
10 required, BabyBus denies the remaining allegations in this paragraph, including on the ground that
11 they are vague.

12 29. Paragraph 29 contains legal conclusions and arguments to which no response is
13 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

14 30. Paragraph 30 contains legal conclusions and arguments to which no response is
15 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

16 31. BabyBus admits that JoJo has been depicted as happy. BabyBus admits that JoJo
17 has been depicted with supportive siblings and parents. BabyBus denies that any identified, alleged
18 similarities between JoJo and any other fictional character reach elements of the characters that are
19 protectable in copyright or constitute copyright infringement. Paragraph also 31 contains legal
20 conclusions and arguments to which no response is required; to the extent a response is required,
21 BabyBus denies the remaining allegations in this paragraph, including on the ground that they are
22 vague.

23 32. Paragraph 32 contains legal conclusions and arguments to which no response is
24 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

25 33. BabyBus admits that there is a Super JoJo work entitled “The Boo Boo Song” and
26 that Exhibit 2 to the Complaint appears to reflect screenshots of the Super JoJo video with that title.
27 BabyBus denies the characterization of that work as “infringing.” BabyBus denies the allegation,
28 or alleged implication, that any identified, alleged similarities encompass copyright protectable

1 elements or constitute copyright infringement. Paragraph 33 also contains legal conclusions and
2 arguments to which no response is required; to the extent a response is required, BabyBus denies
3 the remaining allegations in this paragraph.

4 34. BabyBus currently lacks knowledge or information sufficient to form a belief as to
5 the truth or falsity of the allegations contained in paragraph 34, and therefore denies them.

6 35. BabyBus admits that it published a video for Super JoJo entitled “The Boo Boo
7 Song.” BabyBus denies the remaining allegations in Paragraph 35.

8 36. Paragraph 36 contains legal conclusions and arguments to which no response is
9 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

10 37. BabyBus admits that the screenshots in Paragraph 37 depict JoJo with a bruise on his
11 forehead, which is appropriately colored to reflect how a bruise naturally occurs in the context
12 human anatomy, including coloration that fades in intensity from the center of the bruise. BabyBus
13 admits that in the work depicted in the screenshots appearing in Paragraph 37, JoJo’s eyes are blue
14 in color, and JoJo’s mother wipes a tear away from one of JoJo’s eyes, while his other eye remains
15 open; and after that, JoJo’s mother kisses his head above a brightly colored bandage. BabyBus
16 admits that the subtitles for the screenshots appearing in Paragraph 37, which screenshots also
17 include JoJo, state “Mommy will help you” and “make your boo boo better.” BabyBus denies that
18 any identified, alleged similarities between JoJo and any other fictional character reach elements of
19 the characters that are protectable in copyright or constitute copyright infringement. Paragraph 37
20 also contains legal conclusions and arguments to which no response is required. To the extent a
21 response is required, BabyBus denies the remaining allegations in this paragraph.

22 38. BabyBus admits that the screenshots in paragraph 38 depict JoJo’s sister wearing a
23 bright pink, purple, and light pink sneaker on her foot, and further depicts JoJo’s sister hitting her
24 foot against a solid, white surface. BabyBus admits that the screenshots in paragraph 38 further
25 depict JoJo’s mother with red hair and wearing a green shirt, and depict JoJo’s sister with brown
26 hair and wearing a blue dress with a white tee shirt underneath it. BabyBus admits that the
27 screenshots in paragraph 38 as depict JoJo’s mother giving a “high-five” to JoJo’s sister. BabyBus
28 denies that any identified, alleged similarities between JoJo and any other fictional character reach

1 elements of the characters that are protectable in copyright or constitute copyright infringement.
2 Paragraph 38 also contains legal conclusions and arguments to which no response is required; to the
3 extent a response is required, BabyBus denies the remaining allegations in this paragraph.

4 39. BabyBus admits that the screenshots in paragraph 39 depict JoJo's brother with
5 orange-hair and JoJo's mother with red hair. BabyBus admits that the screenshots in paragraph 39
6 further depict JoJo's mother kissing JoJo's brother as well as JoJo's brother inspecting a bandage
7 on his right arm. BabyBus denies that any identified, alleged similarities between JoJo and any
8 other fictional character reach elements of the characters that are protectable in copyright or
9 constitute copyright infringement. Paragraph 39 also contains legal conclusions and arguments to
10 which no response is required; to the extent a response is required, BabyBus denies the remaining
11 allegations in this paragraph.

12 40. BabyBus admits that the screenshots in paragraph 40 depict a bandaged JoJo, as well
13 as his orange haired brother and brown-haired sister, peering through a door. BabyBus admits that
14 the screenshots in paragraph 40 further depict one of the children placing a polka dotted red bandage
15 on the mother's hand, as well as JoJo kissing his mother alone on a blue couch with a blue pillow,
16 and with JoJo's siblings' bare heads in the foreground. BabyBus denies that any identified, alleged
17 similarities between JoJo and any other fictional character reach elements of the characters that are
18 protectable in copyright or constitute copyright infringement. Paragraph 40 also contains legal
19 conclusions and arguments to which no response is required; to the extent a response is required,
20 BabyBus denies the remaining allegations in this paragraph.

21 41. Paragraph 41 contains legal conclusions and arguments to which no response is
22 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

23 42. Paragraph 42 contains legal conclusions and arguments to which no response is
24 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

25 43. BabyBus currently lacks knowledge or information sufficient to form a belief as to
26 the truth or falsity of the allegations contained in paragraph 43, and therefore denies them.

27 44. BabyBus admits the existence of a BabyBus work called "Yes Yes Vegetable Song."
28 BabyBus denies that any identified, alleged similarities between BabyBus' works and any other

1 works reach elements that are protectable in copyright or constitute copyright infringement.
2 Paragraph 44 also contains legal conclusions and arguments to which no response is required; to the
3 extent a response is required, BabyBus denies the remaining allegations in this paragraph.

4 45. BabyBus admits that Exhibit 3 contains screenshots depicting a BabyBus work called
5 “Yes Yes Vegetables Song.” BabyBus admits that work includes peas and carrots, in that order.
6 BabyBus denies that any identified, alleged similarities between BabyBus’ works and any other
7 works reach elements that are protectable in copyright or constitute copyright infringement.
8 Paragraph 45 also contains legal conclusions and arguments to which no response is required; to the
9 extent a response is required, BabyBus denies the remaining allegations in this paragraph.

10 46. BabyBus admits that Exhibit 3 contains screenshots depicting the BabyBus work
11 called “Yes Yes Vegetables Song.” BabyBus admits that in that work JoJo’s mother offers JoJo
12 peas, which JoJo subsequently drops. BabyBus denies that any identified, alleged similarities
13 between BabyBus’ works and any other works reach elements that are protectable in copyright or
14 constitute copyright infringement. Paragraph 46 also contains legal conclusions and arguments to
15 which no response is required; to the extent a response is required, BabyBus denies the remaining
16 allegations in this paragraph.

17 47. BabyBus admits that Exhibit 3 contains screenshots depicting the BabyBus work
18 called “Yes Yes Vegetables Song.” BabyBus admits that work depicts a stuffed lamb which is used
19 to encourage eating. BabyBus denies that any identified, alleged similarities between BabyBus’
20 works and any other works reach elements that are protectable in copyright or constitute copyright
21 infringement. Paragraph 47 also contains legal conclusions and arguments to which no response is
22 required; to the extent a response is required, BabyBus denies the remaining allegations in this
23 paragraph.

24 48. BabyBus admits that Exhibit 3 contains screenshots depicting the BabyBus work
25 called “Yes Yes Vegetables Song.” BabyBus admits that work depicts JoJo eating vegetable by
26 himself, after which JoJo shows an empty bowl to his mother. BabyBus denies that any identified,
27 alleged similarities between BabyBus’ works and any other works reach elements that are
28 protectable in copyright or constitute copyright infringement. Paragraph 48 also contains legal

1 conclusions and arguments to which no response is required; to the extent a response is required,
2 BabyBus denies the remaining allegations in this paragraph.

3 49. BabyBus admits that Exhibit 3 contains screenshots depicting the BabyBus work
4 called “Yes Yes Vegetables Song.” BabyBus admits that in that work JoJo is depicted in a high
5 chair, looking up at his mother with an empty bowl, resting his hand on his protruding belly, and
6 then touching a stuffed sheep. BabyBus denies that any identified, alleged similarities between
7 BabyBus’ works and any other works reach elements that are protectable in copyright or constitute
8 copyright infringement. Paragraph 49 also contains legal conclusions and arguments to which no
9 response is required; to the extent a response is required, BabyBus denies the allegations in this
10 paragraph.

11 50. Paragraph 50 contains legal conclusions and arguments to which no response is
12 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

13 51. Paragraph 51 contains legal conclusions and arguments to which no response is
14 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

15 52. Paragraph 52 contains legal conclusions and arguments to which no response is
16 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

17 53. Paragraph 53 contains legal conclusions and arguments to which no response is
18 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

19 54. The first sentence of Paragraph 54 contains legal conclusions and arguments to which
20 no response is required; to the extent a response is required, BabyBus denies the allegations in this
21 paragraph. BabyBus currently lacks knowledge or information sufficient to form a belief as to the
22 truth or falsity of the remaining allegations contained in paragraph 54, and therefore denies them.

23 55. Paragraph 55 contains legal conclusions and arguments to which no response is
24 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

25 56. Paragraph 56 contains legal conclusions and arguments to which no response is
26 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

27 57. BabyBus currently lacks knowledge or information sufficient to form a belief as to
28 the truth or falsity of the second sentence of the allegations contained in paragraph 57, and therefore

1 denies them. Paragraph 57 also contains legal conclusions and arguments to which no response is
2 required; to the extent a response is required, BabyBus denies the allegations in this paragraph.

3 58. BabyBus admits its “Rainbow Ice Cream – Colors Song” work had an associated
4 thumbnail image. Paragraph 58 also contains legal conclusions and arguments to which no response
5 is required; to the extent a response is required, BabyBus denies the remaining allegations in this
6 paragraph.

7 59. BabyBus admits that it received a letter from Moonbug’s counsel containing
8 allegations by Moonbug concerning its copyrights and BabyBus’ works. Paragraph 59 also contains
9 legal conclusions and arguments to which no response is required; to the extent a response is
10 required, BabyBus denies the remaining allegations in this paragraph.

11 60. BabyBus currently lacks knowledge or information sufficient to form a belief as to
12 the truth or falsity of the allegations contained in paragraph 60, and therefore denies them.
13 Paragraph 60 also contains legal conclusions and arguments to which no response is required; to the
14 extent a response is required, BabyBus denies the remaining allegations in this paragraph.

15 61. BabyBus admits that it transmitted a message to Plaintiffs which stated that BabyBus
16 was “having an urgent meeting with [its] legal department on this issue to give a response ASAP.”
17 BabyBus denies the remaining allegations in Paragraph 61.

18 62. BabyBus admits that the videos identified Exhibit 8 to the Complaint were removed
19 from public view while BabyBus investigated Plaintiffs’ claims. BabyBus denies the remaining
20 allegations in Paragraph 62.

21 63. BabyBus currently lacks knowledge or information sufficient to form a belief as to
22 the truth or falsity of the allegations contained in paragraph 63, and therefore denies them.

23 64. BabyBus currently lacks knowledge or information sufficient to form a belief as to
24 the truth or falsity of the allegations contained in paragraph 64, and therefore denies them.

25 65. BabyBus admits that certain videos identified by Plaintiffs were removed from
26 public view while BabyBus investigated Plaintiffs claims, but denies that those removals indicated
27 any alleged infringement of any copyrights. BabyBus expressly denies that it has infringed any of
28 Plaintiffs’ alleged copyrights. BabyBus denies the remaining allegations in Paragraph 65.

1 66. BabyBus denies the first sentence of Paragraph 66. BabyBus currently lacks
2 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
3 allegations contained in paragraph 66, and therefore denies them.

4 67. BabyBus denies the allegations in Paragraph 67.

5 68. BabyBus currently lacks knowledge or information sufficient to form a belief as to
6 the truth or falsity of the allegations contained in paragraph 68, and therefore denies them.

7 69. BabyBus denies that no Super JoJo channel has been terminated. BabyBus admits
8 that Plaintiffs previously triggered termination of a Super JoJo channel. Paragraph 69 also contains
9 legal conclusions and arguments to which no response is required; to the extent a response is
10 required, BabyBus denies the remaining allegations in this paragraph.

11 70. BabyBus currently lacks knowledge or information sufficient to form a belief as to
12 the truth or falsity of the allegations contained in Paragraph 70, and therefore denies them.

13 71. BabyBus admits that on or about August 11 and 12, 2021 BabyBus submitted counter
14 notifications for the four videos listed in Paragraph 71. BabyBus denies the remaining allegations
15 in Paragraph 71.

16 72. BabyBus denies that it has displayed or distributed any works that infringe any of
17 Plaintiffs' alleged copyrights. BabyBus denies the remaining allegations in Paragraph 72.

18 73. BabyBus repeats and incorporates by reference, as if fully set forth herein, its
19 responses to all of the allegations in the preceding paragraphs.

20 74. Paragraph 74 contains legal conclusions and arguments to which no response is
21 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

22 75. BabyBus currently lacks knowledge or information sufficient to form a belief as to
23 the truth or falsity of the allegations contained in paragraph 75, and therefore denies them.

24 76. Paragraph 76 contains legal conclusions and arguments to which no response is
25 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

26 77. Paragraph 77 contains legal conclusions and arguments to which no response is
27 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

28

1 78. Paragraph 78 contains legal conclusions and arguments to which no response is
2 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

3 79. BabyBus admits that it has not acquired a license from Plaintiffs, because it did not
4 need any such license. BabyBus denies any implication that it needed a license from Plaintiffs.
5 Paragraph 79 also contains legal conclusions and arguments to which no response is required; to the
6 extent a response is required, BabyBus denies the allegations in this paragraph.

7 80. Paragraph 80 contains legal conclusions and arguments to which no response is
8 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

9 81. Paragraph 81 contains legal conclusions and arguments to which no response is
10 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

11 82. Paragraph 82 contains legal conclusions and arguments to which no response is
12 required. To the extent a response is required, BabyBus denies the allegations in this paragraph.

13 **AFFIRMATIVE DEFENSES**

14 BabyBus identifies the following affirmative defenses and reserves the right to raise
15 additional defenses as discovery proceeds. BabyBus does not assume the burden of proof on any
16 issue, however characterized, on which it does not bear that burden. BabyBus reserves all
17 affirmative defenses not stated herein under Rule 8(c) of the Federal Rules of Civil Procedure and
18 any other defense at law or in equity that may now exist or in the future be available based upon
19 discovery and further investigation in this case.

20 1. Moonbug's claims are barred by the doctrine of copyright misuse, including because
21 Moonbug has knowingly asserted copyright monopolies that violate copyright laws and public
22 policy. Moonbug is attempting to use expand whatever monopoly it may own (if any) over its own
23 copyrighted works into areas not protectable in copyright; that constitutes copyright misuse.
24 Moonbug has accomplished this misuse by transmitting false and/or misleading Digital Millenium
25 Copyright Act ("DMCA") takedown notices to YouTube, for the purpose of enticing YouTube to
26 take down BabyBus videos that do not infringe Moonbug's copyrights. Additionally, Moonbug's
27 assertion of improper copyright claims against BabyBus, a competitor in the children's
28 entertainment marketplace, represents an attempt to force its competitor out of the market entirely.

1 Moonbug's transmission of multiple, improper DMCA takedown notices through the YouTube
2 platform and continued maintenance of those claims despite action taken by BabyBus to address
3 Moonbug's concerns show that Moonbug's interest is not the protection of its alleged copyrights,
4 but harming BabyBus, a competitor in the same marketplace. Moonbug's assertion of unprotectable
5 copyright features of its character JJ and tropes regarding family structure or topics common in
6 children's media represents Moonbug's attempt to secure a monopoly over the uncopyrightable
7 features of its works.

8 2. Moonbug's failure to mitigate any alleged damages further bars its claims or limits
9 their recovery. BabyBus first created the DouDou character in or around 2016, which was the basis
10 for the 3-D Model that became JoJo in 2019. BabyBus began creating videos on YouTube and other
11 platforms full time in 2019 utilizing the JoJo character. Moonbug only asserted allegations of
12 copyright infringement, however, years later in or around June 2021 after BabyBus had filed its IPO
13 application materials to the Shenzhen Stock Exchange. Moonbug's delay of over a year before
14 attempting to assert its alleged copyrights increased Moonbug's alleged damages as it coincided
15 with the growth of the BabyBus channel over that same period.

16 3. Moonbug's claims are also barred by the doctrine of *de minimis* use. Moonbug's
17 allegations of similarities between its works and BabyBus' works are based on ideas and expressions
18 that are not protectable in copyright, including but not limited to, anatomical features of human
19 infants (*i.e.* large head, spare hair, large eyes), the composition of a traditional nuclear family as
20 found in family-friendly and children's media (*i.e.* two parents, three children, and a pet), and
21 abstract lessons learned by children while they grow up (*i.e.* eating vegetables, treating bruises, etc.).
22 To the extent that any similarities may extend to protectable content, the similarities are so minor,
23 and make up such a small feature of the works as to constitute *de minimis* use that is not actionable.

24 4. Moonbug's claims are further barred by the doctrine of fair use. As stated above,
25 Moonbug's allegations of similarities between its works and BabyBus' works are based on ideas
26 and expressions that are not protectable in copyright, including but not limited to, anatomical
27 features of human infants (*i.e.* large head, spare hair, large eyes), the composition of a traditional
28 nuclear family as found in family-friendly and children's media (*i.e.* two parents, three children, and

1 a pet), and abstract lessons learned by children while they grow up (*i.e.* eating vegetables, treating
 2 bruises, etc.). To the extent that any similarities may extend to protectable content, the similarities
 3 are so minor that they do not make up a substantial portion of Moonbug’s works, which weighs in
 4 favor of a finding of fair use. Additionally, because Moonbug’s works have already been published,
 5 and BabyBus’ works are educational in nature (teaching lessons to children), the nature of the works
 6 also weighs in favor of a finding of fair use. Moonbug is further unable to demonstrate any
 7 diminishment in the value of its own works in the marketplace, demonstrating that BabyBus’ works
 8 have not had a negative impact on the potential market for, or value of, Moonbug’s works—which
 9 also weighs in favor of a finding of fair use.

10 5. The injunctive relief Moonbug seeks is barred by the doctrine of laches, including
 11 because Moonbug has unreasonably delayed in alleging copyright infringement. BabyBus first
 12 created the DouDou character in or around 2016, which was the basis for the 3-D Model that became
 13 JoJo in 2019. BabyBus began creating videos on YouTube and other platforms full time in 2019
 14 utilizing the JoJo character. Moonbug only asserted allegations of copyright infringement, however,
 15 years later in or around June 2021 after BabyBus had filed its IPO application materials with the
 16 Shenzhen Stock Exchange. As a result of Moonbug’s unreasonable delay in alleging copyright
 17 infringement, timed specifically to coincide with BabyBus’ announcement of its IPO, BabyBus’
 18 overall business has been threatened to a much greater degree than if the copyright allegations or
 19 suit would have been filed in a reasonable time. Moonbug’s unreasonable delay in alleging
 20 copyright infringement, timed specifically to coincide with BabyBus’ announcement of its IPO, also
 21 appears to be designed to unreasonably increase the damages that Moonbug seeks to claim.

22 **BABYBUS’ COUNTERCLAIMS**

23 In accordance with Rule 13 of the Federal Rules of Civil Procedure, Counter-Plaintiff
 24 BabyBus (Fujian) Network Technology Co., Ltd. (“BabyBus”) hereby alleges and asserts the
 25 following counterclaims against Counterclaim-Defendants Moonbug Entertainment Limited and
 26 Treasure Studio, Inc. (collectively “Moonbug”).

27 **SUMMARY OF THE ACTION**

28 1. Within days of learning about BabyBus’ initial public offering, Moonbug began

1 attempting to use baseless Digital Millennium Copyright Act (“DMCA”) takedown notices to
2 effectively shut down BabyBus’ lawful, competitive business, which had previously operated for
3 over two years including through BabyBus’ flagship Super JoJo YouTube channel.

4 2. As reflected in Moonbug’s Complaint, Moonbug submitted over 70 DMCA
5 takedown notices under its alleged copyrights associated with the “CoComelon” YouTube channel
6 and the character “baby JJ” and JJ’s family. These notices were premised on numerous, meritless
7 claims and allegations, including claims for infringement based on 3D animated renderings of a
8 human baby based on the characteristics of infants found in nature (i.e. large heads, large eyes, heads
9 sparsely-covered with hair, etc., *see* Compl. ¶ 31). Such generic characteristics are found in nature
10 and shared among countless, human babies, and Moonbug’s allegations cannot support a copyright
11 claim.

12 3. Moonbug’s repeated assertions of copyright infringement premised on such
13 blatantly-unprotected features violates the DMCA’s prohibition on knowingly and materially
14 misrepresenting works as infringing. *See* 17 U.S.C. § 512(f).

15 4. Moonbug’s conduct and misuse of DMCA requests have continued throughout this
16 lawsuit, even after BabyBus retracted its request for a Temporary Restraining Order (“TRO”) and
17 after YouTube reinstated BabyBus’ English-language channel. Following BabyBus’ retraction of
18 its TRO application, Moonbug transmitted at least an additional 55 false and misleading DMCA
19 takedown notices to YouTube.

20 5. Moonbug’s continued use of false and misleading DMCA notices that relate to
21 unprotectable physical features and themes common to children’s entertainment represents a
22 continued campaign of anti-competitive harassment designed to remove potential competition
23 through knowing misuse of Moonbug’s allegedly copyrighted works. Moonbug’s continued use of
24 false and misleading DMCA notices to target videos based only on generic character features and
25 story themes shows Moonbug’s continued bad faith use of the DMCA notice-and-takedown process.

26 **PARTIES**

27 6. BabyBus is a corporation organized under the laws of China, with its principal place
28 of business at 2nd Floor, Building 10, Hongfang, No. 1 Jingong Road, Fuzhou City, Fujian Province,

1 China 350007.

2 7. On information and belief, Moonbug Entertainment Limited is a private limited
3 company organized and existing under the laws of the United Kingdom, with an address at 3-6, 2nd
4 Floor, LABS Upper Lock, Water Ln, London NW1 8JZ, United Kingdom.

5 8. On information and belief, Treasure Studio Inc. is a California corporation with an
6 address at 18100 Von Karman #400, Irvine, California, 92612. On information and belief, Treasure
7 Studio is a wholly owned subsidiary of Moonbug.

8 **JURISDICTION AND VENUE**

9 9. These Counterclaims arise under the copyright laws of the United States. This Court
10 has subject matter jurisdiction over BabyBus' Counterclaims under 17 U.S.C. § 512(f) and 28
11 U.S.C. § 1338.



12 10. This Court has personal jurisdiction over Moonbug at least by virtue of Moonbug's
13 consent to the personal jurisdiction of this Court by the filing of the Complaint against BabyBus in
14 this Court.

15 11. For purposes of BabyBus' Counterclaims set forth herein, venue is proper in this
16 district under 28 U.S.C. § 1391(b)-(c) and 1400(b) because this action was filed in this district by
17 Moonbug and Moonbug has thus submitted to personal jurisdiction in this Court and has consented
18 to this venue.

19 **FACTUAL ALLEGATIONS**

20 **A. JoJo Version 1.0: Doudou**

21 12. The origin of Baby JoJo began in 2016, when BabyBus created and published a
22 children's show on YouTube titled "Barber" featuring a baby named Doudou. Doudou's look was
23 inspired by a "New Year Doll," which is commonly depicted in Chinese cultural celebrations. *See*
24 Table 2 below:

Table 2	
	
BabyBus' Doudou	New Year Doll




13. In traditional Chinese culture, families post a picture of the New Year Doll on their door during the Lunar New Year holiday—a picture that includes a baby boy with a big head and comparatively small body, a single-color hair tuft on the top of his head, big eyes and thin, rounded eyebrows, and thin lips with a half-moon smile—just like Doudou.

14. To protect its work, BabyBus applied for and was granted a copyright in Doudou in China. China and the United States are both signatories to the Berne Convention for the Protection of Literary and Artistic Works, meaning that BabyBus' registration of a copyright in Doudou in China entitles BabyBus to copyright protection over Doudou in both the China and the United States.













B. 2-D Doudou's Evolution Into 3-D JoJo

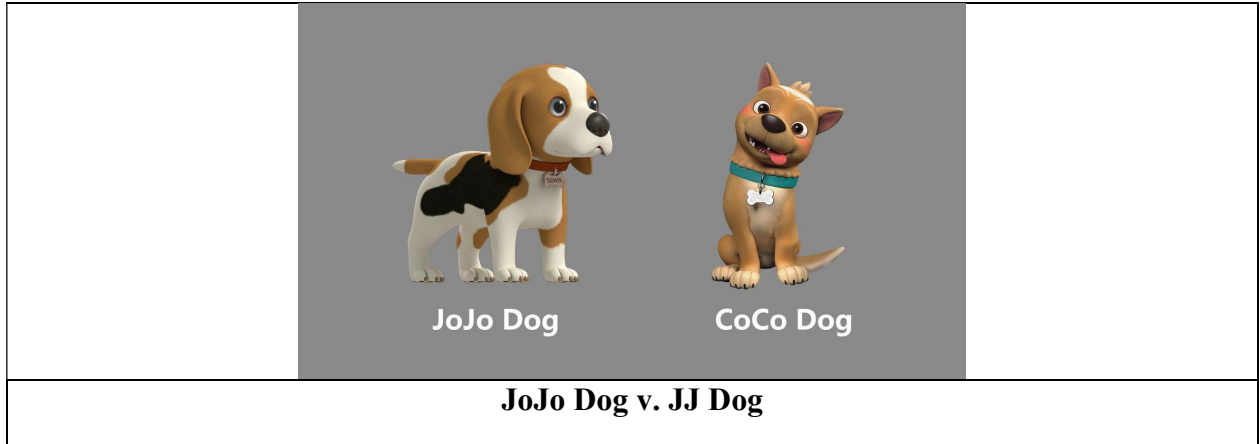
15. Shortly after Doudou's introduction, trends in the market for children's entertainment programming moved from 2-D to 3-D animation. To meet the growing demand for 3-D animation, in early 2019, BabyBus sought licenses for a 3-D digital models of a baby boy and his family. BabyBus ultimately licensed a set of 3-D models which included a baby boy who resembles Doudou.

16. Both the licensed model and Doudou have a brown monolithic swirl of hair on the top of head, brown, thin rounded eyebrows, oversized eyes with large irises and pupils, rosy cheeks, large ears, and a half-moon mouth with thin lips. *See* Table 3 below.

Table 3		
		
Doudou	Licensed 3-D Model	JoJo

17. The 3-D model set also included a sister and brother—well suited to BabyBus since Doudou also has both a sister and a brother. See Table 4, below, for comparison of JoJo and JJ's family members.

Table 4					
					
JoJo Father 1	JoJo Father 2	CoCo Father	JoJo Mother 1	JoJo Mother 2	CoCo Mother
JoJo Father v. JJ Father			JoJo Mother v. JJ Mother		
					
JoJo Brother 1	JoJo Brother 2	CoCo Brother	JoJo Sister 1	JoJo Sister 2	CoCo Sister
JoJo Brother v. JJ Brother			JoJo Sister v. JJ Sister		



18. After licensing the 3-D models, BabyBus made further changes to the 3-D models to create the characters JoJo and his family.

C. BabyBus' YouTube Channels

19. BabyBus used the Super JoJo characters to create a series of videos, which BabyBus uploaded to YouTube. These videos were designed for young children, and covered well-known subjects of that genre, including encouraging children to have good hygiene and eat vegetables. Several of the videos use songs to help convey their intended message.

20. BabyBus launched its flagship Super JoJo channel on YouTube in 2019. Since that time, BabyBus' total number of YouTube subscribers has exceeded 20,000,000, and videos on the Super JoJo channel have been viewed more than 12 billion times.

21. BabyBus' flagship Super JoJo YouTube channel English-language videos primarily aimed at an American audience. In addition to its English-language Super JoJo channel, BabyBus also created additional versions of its videos for other, foreign-language themed channels that are aimed at viewers outside of the United States. For example, Super JoJo - 童謡と子供の歌 is a Japanese-language channel, aimed at viewers in Japan, which has 1.58 million subscribers; أغاني أطفال - Super JoJo is an Arabic-language channel, aimed at viewers in Arabic-speaking countries, which has 2.68 million subscribers; and Super JoJo Bahasa Indonesia is a channel in the Bahasa Indonesia dialect, aimed at viewers in Indonesia, which has 4.57 million subscribers.

22. BabyBus was only able to build such a large, international following, and reliable customer base, as the result of massive investments of time and resources, including millions of

1 dollars in creating the videos and localizing the videos in so many different languages.

2 **D. Moonbug and Its Illicit Takedown Campaign**

3 23. Beginning on July 20, 2021, within days of learning about BabyBus' initial public
4 offering, Moonbug launched an unlawful campaign to terminate the Super JoJo channels.

5 24. As of the date of this filing, Moonbug's campaign has involved the transmission of
6 at least 120 false and/or misleading DMCA takedown notices through YouTube's platform,
7 targeting several of BabyBus' YouTube channels including its flagship English-language channel,
8 its Indonesia channel, its Spanish language channel, and others.

9 25. Following the receipt of the initial copyright strikes on its channels, BabyBus began
10 submitting counter-notifications to YouTube in or around August 2021. YouTube's automated
11 system relies on counter-notifications (among other measures) to protect against unlawful takedown
12 attempts exactly like the one Moonbug is attempting against BabyBus; accordingly, BabyBus
13 submitted counter-notifications. In its counter-notifications, BabyBus described, in part, the
14 development of its JoJo character as it evolved from the 2016 2D-model of DouDou into the later
15 3D-model of JoJo, including the use of general characteristics of a little boy including big eyes, ears,
16 a laughing mouth, and how JoJo was originally derived from the New Year doll of traditional
17 Chinese culture. BabyBus also detailed differences from its Super JoJo characters and those of
18 Moonbug's characters, including differences in the physical features of the family, differences in
19 employment and interest of the parent characters, and the educational status of the JoJo character
20 when compared with Moonbug's JJ character. BabyBus continued to submit counter-notifications
21 in response to Moonbug's YouTube DMCA notices both prior to and following the temporary
22 suspension of BabyBus's English-language Super JoJo channel.

23 26. In response to Moonbug's submission of 70 false and/or misleading DMCA notices,
24 and as a result of BabyBus' counter-notifications, YouTube removed works corresponding to only
25 nine of Moonbug's improper notices. The Moonbug notices that resulted in removals relied almost
26 exclusively on Moonbug's copyright in its JJ character and relied on false and/or misleading
27 allegations of character "copying" to demand that YouTube take down entire videos. For example,
28 Moonbug's first two improper DMCA takedown notices claimed that two BabyBus works allegedly

1 infringed Copyright Reg. No. VAu001379978, which only covers a 2-D artwork titled “JJ” (and
 2 which reflects a creation date *after* Doudou’s publication), as well as Copyright Reg. No.
 3 VAu001322038, which is for 2-D artwork titled “Unpublished Family Characters.”

4 27. Moonbug has at various times provided both YouTube and BabyBus the reasoning
 5 for its claims of copyright infringement. Moonbug’s attempts to explain its improper takedown
 6 notices reveal the improper nature of its claims.

7 28. Moonbug has, in part, focused on alleged similarities in the face of its character JJ
 8 and BabyBus’s character JoJo—but the “similarities” alleged by Moonbug are limited to naturally
 9 occurring features of all infants. For example, Moonbug has previously argued that depicting an
 10 infant with a single tuft of hair, thin eyebrows, big eyes, and colorful clothing somehow “infringes”
 11 its copyrights. As these features are common to both fictional and non-fictional babies, it appears
 12 that Moonbug simply wants to prevent a competitor from depicting infants altogether, thus driving
 13 a competitor from the marketplace.

14 29. Moonbug has suggested that its copyrights prevent competitors from depicting
 15 infants as “happy, positive, eager and curious boys, phenomenally open to learning things and
 16 helping others, and easily coaxed through any less-than-upbeat emotions in the time it takes to sing
 17 an instructive song.” Moonbug’s suggestion that it can prevent a competitor from depicting curious
 18 children eager to learn things shows the frivolous nature of Moonbug’s claims.

19 30. Moonbug has argued that its copyrights prevent competitors from depicting
 20 traditional “nuclear” families. For example, Moonbug has argued that its copyrights cover a “family
 21 consisting of mother, father, older sister and older brother,” as well as a dog named Bingo. But that
 22 sort of traditional family structure is common in the media, including media designed for young
 23 children. Moonbug’s suggestion that depicting a family with a mother, father, two older siblings,
 24 and a dog is somehow an act of “infringement” once again shows the false and improper nature of
 25 Moonbug’s copyright claims.

26 **E. Moonbug Did Not Form the Required Good Faith Belief Before Submitting Its**
 27 **False and/or Misleading DMCA Notices.**

28 31. In each of its false and/or misleading DMCA takedown notices, Moonbug’s alleged

1 and asserted copyrights were based on the character “baby JJ” and JJ’s family which were characters
2 on Moonbug’s “CoComelon” YouTube channel. JJ’s family is made up of a mother, father, older
3 sister, older brother, and dog. However, and despite representing to YouTube that it had allegedly
4 formed a “good faith belief” that BabyBus was infringing its copyrights, Moonbug submitted its
5 takedown notices *without* forming a good faith belief regarding BabyBus’ alleged infringement.

6 32. Moonbug did not form a good faith belief regarding BabyBus’ alleged infringement
7 because Moonbug did not consider whether it was alleging copyright protection for elements of its
8 works that are not protectable in copyright. For example, on July 20, 2021, Moonbug sent a letter
9 to YouTube that claimed “copyright protection” for various elements of its infant baby JJ character
10 that have previously been found unprotectable in copyright, such as a large head, with a single tuft
11 of hair, large eyes, etc. By failing to consider whether it was asserting similarities only in protectable
12 elements of its work, Moonbug failed to form a good faith belief regarding its allegations of
13 infringement against BabyBus.

14 33. On information and belief, Moonbug did not form a good faith belief regarding
15 BabyBus’ alleged infringement because Moonbug did not reasonably consider the doctrine of fair
16 use. As noted above, Moonbug submitted a letter to YouTube that unlawfully claimed copyright
17 protection over multiple elements of its JJ character that are not protectable in copyright.
18 Accordingly, to the extent that any of the similarities may have been protectable in copyright, those
19 similarities would be very minor, and not a substantial portion of the works at issue. The
20 insubstantial nature of the similarities, coupled with the nature of the works (published, educational
21 works), and the lack of cognizable injury to Moonbug (because the market value of Moonbug’s
22 works does not appear to have diminished), means that any alleged copying by BabyBus would be
23 protected under the doctrine of fair use. Moonbug failed to consider this doctrine, as evinced by the
24 fact that it is not discussed in Moonbug’s July 20, 2021 letter to YouTube. Accordingly, Moonbug
25 also failed to form a good faith belief regarding whether any similarities between its works and
26 BabyBus’ could be attributed to the doctrine of fair use.

27 34. On information and belief, Moonbug also failed to form a good faith belief regarding
28 BabyBus’ alleged infringement under the doctrine of willful blindness. Moonbug is aware that its

1 accusations against BabyBus rely on, *inter alia*, features of its JJ character that are not protectable
 2 in copyright, and thus Moonbug rendered itself willfully blind by purposefully avoiding an in-depth,
 3 reasoned analysis regarding whether any similarities between Moonbug and BabyBus' works
 4 reached elements that were protectable in copyright.

5 35. After receiving Moonbugs improper and illicit DMCA takedown notices, YouTube
 6 placed "copyright strikes" on BabyBus' channels. YouTube uses copyright strikes to comply with
 7 the DMCA's requirement that internet service providers develop a "policy that provides for the
 8 termination in appropriate circumstances of subscribers and account holders of the service
 9 provider's system or network who are repeat infringers." 17 U.S.C. § 512(i). YouTube's system of
 10 detecting repeat infringers is fully automated, meaning that YouTube will automatically place
 11 copyright strikes against *non*-infringing channels that are the subject of false and/or misleading
 12 DMCA takedown notices. On information and belief, Moonbug is fully aware of the automated
 13 nature of YouTube's copyright strike system, and Moonbug intended to exploit that system in order
 14 to unlawfully remove a competitor's—BabyBus'—products from the marketplace.

15 **F. BabyBus Has Been Harmed By Moonbug's Unlawful Takedown Campaign**

16 36. Despite the indefensible nature of Moonbug's false and/or misleading allegations,
 17 the automated nature of YouTube's DMCA notice process triggered the temporary removal of the
 18 entire Super JoJo Channel on or around August 26, 2021. That temporary removal resulted in a
 19 complete loss of search-engine standing on YouTube that BabyBus had built up over the past two
 20 years, as well as damage to search-engine standing of BabyBus' other channels. Without that
 21 standing, BabyBus' videos appear much lower on the list of videos when a parent or child searches
 22 for videos designed for young children, and that has the practical effect of reducing view ship of
 23 BabyBus' videos. Similarly, BabyBus' videos are less likely to be recommended to viewers in that
 24 market who regularly view videos designed for young children.

25 37. Before the termination of BabyBus' English-language Super JoJo Channel, the
 26 videos on that channel were viewed on an average of *27 million times per day* and received about
 27 40,000 new subscribers per day. While the channel was down, any growth ceased and BabyBus'
 28 losses amounted to between \$400,000 and \$500,000 per month.

1 38. BabyBus later engaged in YouTube’s appeal process on or around September 10,
2 2021 in an effort to get its channel restored. In this appeal, BabyBus again detailed the number of
3 ways in which Moonbug’s claims of infringement were deficient and did not warrant termination of
4 BabyBus’ English-language channel. BabyBus also reiterated what it had stated in its counter-
5 notifications, namely that Moonbug had identified generic and non-protectable characteristics such
6 as a round head with small tuft of hair, a small body, pajamas, two top teeth, and a positive demeanor
7 as Moonbug’s basis for its claims of infringement.

8 39. Following BabyBus’ filing of detailed TRO papers in this action explaining the
9 unfounded nature of Moonbug’s claims, YouTube reinstated BabyBus’ English-language Super
10 JoJo Channel on or around October 5, 2021. However, despite being restored, BabyBus’ English-
11 language Super JoJo Channel has not seen the same customer and viewer growth that it did before
12 Moonbug’s unlawful takedown campaign. Moonbug’s false and/or misleading DMCA notices may
13 have caused BabyBus permanently to lose both current and prospective viewers, subscribers, and
14 revenue.

15 40. Beginning on or around October 7, 2021, the day after BabyBus’ channel was
16 reinstated and after BabyBus withdrew its TRO application seeking an order requiring Moonbug to
17 withdraw its false and/or misleading DMCA notices and barring Moonbug from submitting any
18 more, Moonbug began a renewed campaign against BabyBus by sending even more false and/or
19 misleading infringement notices to YouTube. In total, Moonbug has sent at least 55 new false and/or
20 misleading notices in addition to its prior 70 requests. These new notices, like Moonbug’s prior
21 notices, target all of BabyBus’ content generally including in videos and songs that are in the public
22 domain.

23 41. The harm Moonbug caused to BabyBus’ ability to do and grow business through its
24 flagship English-language Super JoJo channel is especially acute now, in the fourth quarter of the
25 year, because it is the peak season of the YouTube advertising ecosystem.

26 42. Moonbug has continued its campaign to stop BabyBus’ English-language channel
27 through its new and repetitive bad faith, false and/or misleading DMCA requests based on
28 unprotectable characteristics, such as a baby depicted with a “large head.” Moonbug has continued

1 these actions despite knowing that their alleged copyrights and attempted enforcement are based on
 2 unprotectable characteristics and themes. Moonbug has already harmed—and without relief will
 3 continue to harm—BabyBus through the submission of false and misleading DMCA notices to
 4 YouTube.

5 **COUNT ONE**

6 **(Copyright Misrepresentation under 17 U.S.C. § 512(f))**

7 43. BabyBus repeats and incorporates by reference, as if fully set forth herein, its
 8 allegations in the preceding paragraphs.

9 44. Moonbug sent copyright infringement notices to YouTube that contained misleading,
 10 inaccurate, or false information, including but not limited to the misrepresentation that BabyBus had
 11 infringed one or more copyrights allegedly owned by Moonbug. Moonbug's illicit behavior
 12 continued after BabyBus's English-language Super JoJo channel was reinstated by YouTube, and
 13 despite BabyBus' filing of its counterclaims. Moonbug thus appears intent on continuing its
 14 unlawful campaign to remove BabyBus as a competitor.

15 45. On information and belief, Moonbug knew that its copyright infringement notices
 16 contained misleading, inaccurate, or false allegations of infringement at the time the notices were
 17 sent; or, in the alternative, Moonbug deliberately avoided confirming the high probability that its
 18 copyright infringement notices contained misleading, inaccurate, or false allegations of
 19 infringement prior to the notices being sent. Despite being on notice that it sought to enforce
 20 unprotectable elements in its copyrighted works, Moonbug knowingly and in bad faith continued to
 21 file misleading, inaccurate, or false DMCA notices. On information and belief, Moonbug
 22 purposefully timed these notices to circumvent BabyBus' prior TRO application in order to shield
 23 its false and/or misleading notices and anti-competitive conduct from judicial scrutiny.

24 46. For example, Moonbug submitted DMCA notices alleging infringement by two
 25 BabyBus 3-D animated videos based solely on claimed infringement of 2-D artwork of "JJ" and
 26 "Unpublished Family Characters." As Moonbug's Complaint makes clear, Moonbug seeks to claim
 27 copyright ownership of naturally occurring physical features common to all human babies (*e.g.*,
 28 large head, large eyes) and staples of the genre of children's entertainment (*e.g.*, households with

1 two parents, siblings, a pet, and bright colors). Moonbug cannot monopolize these generic features
 2 and, upon information and belief, Moonbug knew its notices to YouTube contained misleading,
 3 inaccurate, or false allegations of infringement at the time they were sent for that reason, among
 4 others.

5 47. As a result of Moonbug's misrepresentations and violation of 17 U.S.C. Section
 6 512(f), BabyBus has suffered immense harm, including but not limited to lost viewership, lost
 7 growth, lost revenue, and damage to its brands and good will. Moonbug is liable for all damages,
 8 including costs and attorneys' fees, incurred by BabyBus.

9 **COUNT TWO**

10 **(Intentional Interference with Economic Expectations)**

11 48. BabyBus has an economic relationship with the overseas subscribers of its foreign
 12 language YouTube channels, including but not limited to the 4.57 million subscribers of BabyBus'
 13 Indonesian channel. BabyBus earns revenue when those overseas subscribers watch its videos on
 14 YouTube.

15 49. Moonbug was aware of BabyBus' economic relationship with its overseas
 16 subscribers, including because Moonbug specifically identified BabyBus' foreign language
 17 channels in a July 20, 2021 letter that Moonbug sent to YouTube. In the same letter, Moonbug also
 18 stated that BabyBus had "113 million" subscribers, which number reflects the combination of
 19 BabyBus' domestic and overseas subscribers.

20 50. Moonbug intentionally interfered with BabyBus' economic relationship with its
 21 overseas subscribers by sending false and/or misleading DMCA takedown notices to YouTube,
 22 which falsely alleged that BabyBus' foreign language videos were infringing on Moonbug's
 23 copyrights. Moonbug's intent is demonstrated not only by the false and/or misleading nature of its
 24 accusations, but also by the timing of its accusations. Moonbug waited to submit takedown notices
 25 until *after* it became aware that BabyBus was preparing for an initial public offering. That timing
 26 demonstrates that Moonbug's true goal was economic harm to BabyBus.

27 51. BabyBus' relationships with its overseas viewers has been actually disrupted as a
 28 result of Moonbug's conduct. For example, as a result of false and/or misleading DMCA notices

1 submitted by Moonbug, at least two videos on BabyBus' Indonesia channel were removed by
 2 YouTube's automated removal system. As explained above, BabyBus was harmed by these
 3 removals because BabyBus' overseas subscribers cannot view removed videos, and BabyBus cannot
 4 earn YouTube revenue from them.

5 52. Moonbug's transmission of the false and/or misleading DMCA takedown notices to
 6 YouTube was both the but-for and proximate cause of YouTube's automated takedowns targeted at
 7 BabyBus' foreign language videos. Moonbug is this liable to BabyBus for intentionally interfering
 8 with BabyBus' economic expectations regarding its relationships with overseas viewers.

9 53. On information and belief, Moonbug submitted the false and/or misleading DMCA
 10 takedown notices at issue to YouTube with the specific intent to oppress, defraud, or otherwise
 11 maliciously harm BabyBus. Accordingly, BabyBus is entitled to punitive damages pursuant to
 12 California Civil Code § 3294.

13 **COUNT THREE**

14 **(Intentional Interference with Contractual Relations)**

15 54. YouTube's terms of service ("YouTube's Terms") represent a contract between
 16 YouTube and BabyBus, which governs both BabyBus' uploading of videos to YouTube, and
 17 YouTube's revenue sharing with BabyBus. YouTube's Terms govern all of the videos uploaded by
 18 BabyBus to YouTube, including but not limited to foreign language videos aimed at overseas
 19 audiences.

20 55. Moonbug was aware of YouTube's Terms, as indicated by Moonbug's references to
 21 clauses found in YouTube's Terms in a July 20, 2021 letter Moonbug sent to YouTube.

22 56. Moonbug's decision to submit false and/or misleading DMCA takedown notices to
 23 YouTube was intended to disrupt, and did disrupt, BabyBus' contract with YouTube by causing
 24 YouTube to take down numerous videos (and whole channels) created by BabyBus. As alleged
 25 above, the takedowns included foreign language videos aimed at overseas subscribers to BabyBus'
 26 YouTube channels. Moonbug's intent to interfere with BabyBus' contract with YouTube is evinced
 27 by Moonbug's explicit demand, stated in a July 20, 2021 letter, that YouTube take down BabyBus'
 28 videos and channels.

62. Moonbug thus engaged in conduct that is fundamentally unfair and an incipient violation of the antitrust laws by transmitting false and/or misleading information to YouTube for the express purpose of attempting to drive a competitor out of the marketplace. Moonbug is thus liable for unfair competition pursuant to California Business and Professions Code § 17200, *et seq.*

63. On information and belief, Moonbug submitted the false and/or misleading DMCA takedown notices at issue to YouTube with the specific intent to oppress, defraud, or otherwise maliciously harm BabyBus; accordingly, BabyBus is entitled to punitive damages pursuant to California Civil Code § 3294.

PRAYER FOR RELIEF

WHEREFORE, BabyBus respectfully requests that the Court enter judgment in its favor and against Moonbug as follows:

- A. Dismissing, with prejudice, Moonbug's Complaint against BabyBus;
- B. Denying all relief that Moonbug seeks in its Complaint and any amendments thereto;
- C. Entering judgment in favor of BabyBus and against Moonbug on BabyBus' Counterclaims;
- D. Awarding BabyBus its damages, restitution, costs, attorney fees, and exemplary damages, and punitive damages, including pursuant to 17 U.S.C. § 512(f) and California Civil Code § 3294.
- E. Enjoining Moonbug from misrepresenting that BabyBus had infringed Moonbug copyrights, including pursuant to 17 U.S.C. § 512(f), California Business and Professions Code § 17200, *et seq.*; and the common law of California.
- F. Awarding any other relief the Court deems just and equitable.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), BabyBus hereby demands trial by jury of all issues properly triable thereby, including but not limited to all such issues raised in Moonbug's Complaint and BabyBus' Counterclaims.

1 DATED: November 9, 2021

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